

(1991) 10 KL CK 0045
In the High Court Of Kerala
Case No : M.F.A. No. 88 of 1983

Fathima and Others

APPELLANT

Vs

Oriental Fire and General Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1988 — Section 140, 144

Citation : (1991) 2 KLJ 699

Hon'ble Judges : T.V. Ramakrishnan, J;K.P.R. Dhakrishna Menon, J

Bench : Division Bench

Advocate : V.K. Gopalakrishna Pillai, for the Appellant; S. Parameswaran, for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

K.P.R. Dhakrishna Menon, J.—The petitioners in O.P. 1003/80 in, the court of the M.A.C.T. Ernakulam are the appellants They are the wife and children of one Mohammed Shereef who died in a motor accident which took place on 5-11-1978. The Tribunal after evaluating the evidence adduced by the parties found that the appellants were not able to establish negligence on the part of the third respondent, the driver, and consequently" dismissed the petition by judgment dt. 14.6.1982.

2. The learned counsel for the appellant argues that the Tribunal was not justified in entering the finding; that the evidence adduced by the appellants was not sufficient to establish negligence. The [evidence available on record would positively] show that a the third respondent was negligent, the counsel submits. On going through the records including the judgment appealed against we are of the view that there is little, scope to interfere with the said finding because the same cannot be said to be perverse.

3. The learned counsel for the appellants nonetheless advanced an [alternative argument that in any event the appellants must be held to be entitled to get the

benefit of Section 92-A of Chapter VII-A of the Motor Vehicles Act, 1939, introduced in the statute by Act 47/82 with effect from 1-10-1982 Section, 92-A of Chapter VII-A corresponding to. Section 140 of the 1988 M.V. Act), the counsel further submitted, fastens, on the owner off the vehicle or a the case may be, the owners of the vehicles the liability to pay the fixed amount of compensation even if the claimant has not pleaded and established that the death or permanent disablement in respect of which the claim has been made due to any wrongful act, neglect or default of the[owner or owners of the vehicle or vehicles concerned or of any other person. The counsel for the Insurance Company however submits that Chapter VII-A has no retrospective operation and therefore the claim of the appellants for compensation]cannot be considered and decided under the provisions contained in this chapter.

4. Before we go into the merits of the above competing contentions we shall refer to a Division Bench ruling of this court construing section 140 of the 1988 M.V. Act (vide *United India Insurance Co. Ltd v. Padmavathy* (1990 (1) KLT 750) The Division Bench has observed as follows

In effect" the Parliament has only retained the same right which was conferred on victims through Chapter VII A of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on a par with the earlier fixed Hence S. 6 of the General Clauses Act would not impede the enforcement of S. 140 of the New Act in relation to an accident which occurred prior to the coming into force of the New Act., S. 6 of the General Clauses Act permits switching over to the repealed Act only if a different intention does not appear in the new statute Such a different intention can be discerned from the New Act. It is in Chapter X of the New Act that provisions regarding no fault liability" have been included. The chapter starts with S. 140 and ends with S. 144. The last Section reads as follows: "The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Apt of any other law for the time being in force". The different intention manifested in the New Act is that provisions in Chapter should get predominance over all other laws. The provisions contained in that Chapter must be given effect to notwithstanding any contrary provision in any other law including S. 6 of the General Clauses Act. All other provisions, therefore, must yield to the provisions contained in Chapter X of the New Act. This is the legislative intention manifested through S. 144 of the New Act".

The Division Bench which rendered the above ruling had no need to go into the question as to whether Sec. 92-A covers claims for compensation in respect of death or permanent disablement of any person arising out of motor accidents which took place prior to the introduction of Chapter VII-A in the 1939 Act. This ruling however would help a claimant to get the fixed sum as compensation falling under the caption "liability without fault in certain cases.

5. It is in this backdrop we have to find an answer to the question as to whether the claim for compensation in respect of death or permanent disablement of a

person arising out of a motor accident which took place prior to 1-10-1982 will come under Sec. 92-A of the 1939 Act. We shall now reproduce the relevant Sections in Chapter VII-A,

92 - A. Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor Vehicles; the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under subsection (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A. claim for compensation under sub-sec. (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made not shall the quantum of compensation recoverable in respect of such, death or permanent disablement be reduced on the basis of the share of such person is the responsibility for such death or permanent disablement

It is clear from these provisions that the Parliament has created certain substantive rights, that could be claimed by the claimants; vide Section 92-A, of the 1939 Act. Sub-section 3 and 4 of Section 92-A, read and understood in the light of the provisions contained in Section 92 (B), which provides that the right to claim compensation. under Sec. 92-A shall be in addition to any other right i.e., the right based on the principle of fault; to claim compensation, however, make it very clear that the right to claim compensation based on the principle of no fault recognised by Section 92-A can successfully be agitated provided the claim petition for compensation under Sec. 110-A had not finally been disposed of prior to 1-10-1982, the date on which Chapter VII-A of The. 1939 Act came into force. In other words a claim petition under Sec. 110-A pending at the time of the introduction of these provisions requires to be disposed of taking into account these provisions also That this is the object sought to be achieved is clear from the plain and unambiguous words employed in the Section. We therefore are of the view that Section 92A a special welfare legislation to the above extent is retrospective. Since the appeal is a continuation of the proceedings from which the appeal has arisen, the above claim, the claimant can

agitate in the appeal he may file against the order/judgment of the Claims Tribunal disposing of his claim petition. We therefore are of the view that the claim petitions which are pending before the Tribunal or the courts [in appeal at the time of the introduction of this provision require to be considered and disposed of keeping in view Sec. 92-A also. If that be the position the claim of the appellants for the benefit of Sec. 140 is sustainable. A reference in this connection to the following observation of the Division Bench in United India Insurance Company Ltd. is profitable :

Therefore, in effect the Parliament has only retained the same right which was conferred on the victims through Chapter VII-A of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on a par with the earlier fixed amount. Hence S. 6 of the General Clauses Act would not impede the enforcement of S. 140 of the New Act in relation to an accident which occurred prior to the coming into force of the New Act.

To put it differently the claimants are entitled to the "no fault" benefit envisaged under Sec. 140 and accordingly they: are entitled to get a sum of Rs. 25,000/- as compensation The award accordingly, is set aside. The claim petition is allowed The claimants are accordingly found entitled to a sum of Rs. 25,000/- as compensation. The Insurance Company shall pay this amount with interest at 12% from the date of filing of this appeal, within four weeks from today.